

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZOE DEVITA

Plaintiff,

-against-

PEERLESS INSURANCE COMPANY,

Defendant.

Civil Action No:

Plaintiff Demands a Trial by Jury

VERIFIED COMPLAINT

Plaintiff, Zoe Devita, by her attorneys, Callan & Byrnes, respectfully
alleges:

JURISDICTION AND VENUE

1. The plaintiff resides in New York State,
2. That on June 16, 2012, defendant, Peerless Insurance Company, was a foreign corporation authorized to issue policies of auto insurance in the State of New York
3. That Peerless Insurance Company, is a foreign corporation authorized to issue policies of auto insurance in the State of New York.
4. That on June 16, 2012, defendant, Peerless Insurance Company, was a foreign corporation and insurance company formed in and by the laws of the State of New Hampshire, was doing business in the State of New York and in the Southern District of New York, and is a "citizen" of New Hampshire pursuant to 28 U.S.C.A. 1332.
5. That defendant, Peerless Insurance Company, is a foreign corporation and insurance company formed in and by the laws of the State of New Hampshire, was and is doing business in the State of New York and in the Southern District of New York, and is a "citizen" of New Hampshire pursuant to 28 U.S.C.A. 1332.
6. That on June 16, 2012, defendant, Peerless Insurance Company's principal office and headquarters was located at 175 Berkeley Street Boston, Massachusetts 02116

which made Peerless Insurance Company a “citizen” of Massachusetts pursuant to 28 U.S.C.A. 1332.

7. That defendant, Peerless Insurance Company's principal office and headquarters is located at 175 Berkeley Street Boston, Massachusetts 02116 making Peerless Insurance Company a “citizen” of Massachusetts pursuant to 28 U.S.C.A. 1332.

8. Jurisdiction before this Court is based upon the diversity of citizenship of the parties pursuant to 28 U.S.C.A. 1332 and the amount in controversy, exclusive of interest and costs, exceeds Seventy Five Thousand (\$75,000) Dollars.

9. This action falls within one or more of the exceptions set forth in New York CPLR § 1602.

10. That on June 16 ,2012, the defendant, Peerless Insurance Company was an insurance company licensed to and doing business in the State of New York and in the Southern District of New York.

11. That defendant, Peerless Insurance Company is an insurance company licensed to and doing business in the State of New York and in the Southern District of New York.

12. That on June 16, 2012, the defendant, Peerless Insurance Company, solicited and underwrote automobile insurance policies in the State of New York in the statutory form as required by the Department of Financial Services of the State of New York.

13. That defendant, Peerless Insurance Company, solicits and underwrites automobile insurance policies in the State of New York in the statutory form as required by the Department of Financial Services of the State of New York.

14. That prior to June 16, 2012, the defendant, Peerless Insurance Company, underwrote and issued to the plaintiff, a policy of automobile insurance bearing policy number PLP W763113 providing, among other things, liability coverage, collision coverage and coverage for under-insured/uninsured motorists, said policy being in effect on June 16, 2012.

15. That prior to June 16, 2012, plaintiff paid a premium and the defendant accepted said premium and the defendant issued a policy to plaintiff bearing number PLP W763113 with all the foregoing coverage, and which policy was in effect on June 16, 2012.

16. That on or about June 16, 2012, at about 1:01 PM, plaintiff, while operating her 2004 GMC Yukon motor vehicle bearing New York State license plate number CYJ4901 on the roadway known as Reeceville Road in Calm Township, Chester County and State of Pennsylvania was northbound approaching the intersecting road of Fisherville Road with the green light in her favor when, Jared Papa heading west on Fisherville Road and driving a 2001 Ford Windstar owned by Tracy Lam and bearing Pennsylvania license plate number DJT2388 ran a red light and came into contact with the aforesaid motor vehicle owned and operated by the plaintiff proximately causing the plaintiff to suffer serious and permanent personal injuries as a result of such contact.

17. That on June 16, 2012, the 2001 Ford Windstar operated by Jared Papa and owned by Tracy Lam and bearing Pennsylvania license plate number DJT2388 was insured with State Farm Mutual Automobile Insurance Company which provided them with one hundred thousand dollars (\$100,000.00) of liability insurance coverage.

18. That in 2016, plaintiff, Zoe Devita, with the prior consent of defendant, Peerless Insurance Company, settled her personal injury action against Jared Papa and Tracy Lam as insureds of State Farm Mutual Automobile Insurance Company for one hundred thousand dollars (\$100,000) the limit of Jared Papa's and Tracy Lam's policy with State Farm Mutual Automobile Insurance Company.

19. That the insurance policy bearing number PLP W763113, issued by defendant, defendant, Peerless Insurance Company, to plaintiff, Zoe Devita was in effect on June 16, 2012 and contained under-insured coverage and in particular with limits in the sum of (\$500,000.00) five hundred thousand dollars and said coverage was applicable to the 2004 GMC Yukon motor vehicle owned by plaintiff, Zoe Devita. bearing New York State license plate CYJ4901 and

which plaintiff, Zoe Devita, was driving on June 16, 2012, when it was struck by aforesaid motor vehicle operated by Jared Papa and said insurance policy and under insurance coverage covered and was applicable to plaintiff, Zoe Devita as a covered person under said policy.

20. That the value of the injuries sustained by the plaintiff, Zoe Devita as a result of the motor vehicle she was driving coming into contact with the motor vehicle owned by Tracy Lam and operated by Jared Papa greatly exceeds the available insurance of (\$100,000.00) one hundred thousand dollars giving rise to plaintiff, Zoe Devita's claim pursuant to the under-insured provisions of her auto mobile insurance policy number PLP W763113 with the defendant, Peerless Insurance Company.

21. That all provisions of the aforesaid insurance policy have been complied with by plaintiff, Zoe Devita and demand has been made by plaintiff, Zoe Devita for compensation pursuant to the under-insured provisions of said policy and the defendant refuses to pay out the remaining sum of four hundred thousand (\$400,000.00) dollars to the plaintiff, Zoe Devita, and the defendant is in violation of **New York State Insurance Law 2601.**

22. That by reason of the foregoing, plaintiff, Zoe Devita sustained severe and permanent personal injuries due to car accident of June 16, 2012, and plaintiff, was otherwise damaged.

23. That plaintiff, Zoe Devita, sustained serious injuries as defined in Subdivision (d) of §5102 of the Insurance Law-Recodification.

24. That plaintiff, Zoe Devita, sustained serious injuries and economic loss greater than basic economic loss as to satisfy the exceptions of §5104 of the Insurance Law.

25. That plaintiff, Zoe Devita is not seeking to recover any damages for which she has been reimbursed by no-fault insurance and/or for which no-fault insurance is obligated to reimburse plaintiff. Plaintiff, Zoe Devita is only seeking to recover those damages not recoverable through no-fault insurance under the facts and circumstances in this action and recoverable through the under insurance policy provision of her insurance policy with defendant,

Peerless Insurance Company in effect on June 16, 2012 and bearing number PLP W763113.

26. As a result of the foregoing, the plaintiff, Zoe Devita been damaged in the sum of four hundred thousand (\$400,000.00) dollars.

WHEREFORE, the plaintiff, Zoe Devita, demands a jury trial and judgment against the defendant, Peerless Insurance Company, on the cause of action alleged herein as follows:

FIRST CAUSE OF ACTION: FOUR HUNDRED THOUSAND (\$400,000.00) DOLLARS together with interest and costs and disbursements of this action.

Dated: New York, New York
January 11, 2017

Callan & Byrnes, LLP
Attorneys for Plaintiff
Zoe Devita
225 Broadway 41st floor
New York, N.Y. 10007
(212) 233-8070

By: _____


Michael Healey (4380)

ATTORNEY'S VERIFICATION

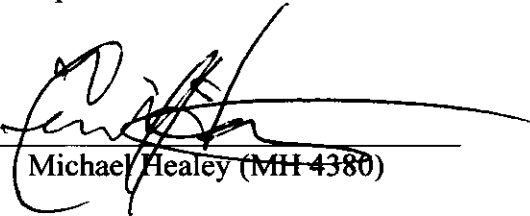
MICHAEL J. HEALEY, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney at CALLAN & BYRNES, LLP., attorneys of record for Plaintiff,

Zoe Devita. I have read the annexed **VERIFIED COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

The reason this verification is made by me and not Plaintiff is that the Plaintiff does not reside in the county wherein the attorneys for the plaintiff maintain their offices.

Dated: New York, New York
January 11, 2017



Michael Healey (MH 4380)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

ZOE DEVITA,

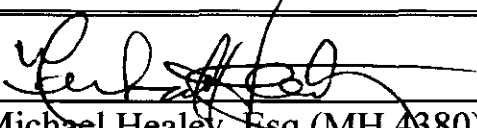
Plaintiff,

-against-

PEERLESS INSURANCE COMPANY,

Defendant.

VERIFIED COMPLAINT


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